

REFERENCE TITLE: **extreme DUI; jail**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1004**

Introduced by  
Senator Waring

## AN ACT

AMENDING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 219, SECTION 2; REPEALING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 195, SECTION 3; RELATING TO DRIVING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-1382, Arizona Revised Statutes, as amended by  
3 Laws 2007, chapter 219, section 2, is amended to read:

4 **28-1382. Driving or actual physical control while under the**  
**extreme influence of intoxicating liquor; trial by**  
**jury; sentencing; classification**

5 A. It is unlawful for a person to drive or be in actual physical  
6 control of a vehicle in this state if the person has an alcohol concentration  
7 of 0.15 or more within two hours of driving or being in actual physical  
8 control of the vehicle and the alcohol concentration results from alcohol  
9 consumed either before or while driving or being in actual physical control  
10 of the vehicle.

11 B. A person who is convicted of a violation of this section is guilty  
12 of driving or being in actual physical control of a vehicle while under the  
13 extreme influence of intoxicating liquor.

14 C. At the arraignment, the court shall inform the defendant that the  
15 defendant may request a trial by jury and that the request, if made, shall be  
16 granted.

17 D. A person who is convicted of a violation of this section:

18 1. Except as otherwise provided in this paragraph, shall be sentenced  
19 to serve not less than thirty consecutive days in jail and is not eligible  
20 for probation or suspension of execution of sentence unless the entire  
21 sentence is served. A person who has an alcohol concentration of 0.20 or  
22 more shall be sentenced to serve not less than forty-five consecutive days in  
23 jail and is not eligible for probation or suspension of execution of sentence  
24 unless the entire sentence is served.

25 2. Shall pay a fine of not less than two hundred fifty dollars, except  
26 that a person who has an alcohol concentration of 0.20 or more shall pay a  
27 fine of not less than five hundred dollars. The fine prescribed in this  
28 paragraph and any assessments, restitution and incarceration costs shall be  
29 paid before the assessment prescribed in paragraph 3 of this subsection.

30 3. Shall pay an additional assessment of two hundred fifty dollars. If  
31 the conviction occurred in the superior court or a justice court, the court  
32 shall transmit the monies received pursuant to this paragraph to the county  
33 treasurer. If the conviction occurred in a municipal court, the court shall  
34 transmit the monies received pursuant to this paragraph to the city  
35 treasurer. The city or county treasurer shall transmit the monies received  
36 to the state treasurer. The state treasurer shall deposit the monies received  
37 in the driving under the influence abatement fund established by  
38 section 28-1304.

39 4. May be ordered by a court to perform community restitution.

40 5. Shall be required by the department, on receipt of the report of  
41 conviction, to equip any motor vehicle the person operates with a certified  
42 ignition interlock device pursuant to section 28-3319. In addition, the  
43 court may order the person to equip any motor vehicle the person operates

1 with a certified ignition interlock device for more than twelve months  
2 beginning on the date of reinstatement of the person's driving privilege  
3 following a suspension or revocation or on the date of the department's  
4 receipt of the report of conviction, whichever occurs later. The person who  
5 operates a motor vehicle with a certified ignition interlock device under  
6 this paragraph shall comply with article 5 of this chapter.

7 6. Shall pay an additional assessment of one thousand dollars to be  
8 deposited by the state treasurer in the prison construction and operations  
9 fund established by section 41-1651. This assessment is not subject to any  
10 surcharge. If the conviction occurred in the superior court or a justice  
11 court, the court shall transmit the assessed monies to the county treasurer.  
12 If the conviction occurred in a municipal court, the court shall transmit the  
13 assessed monies to the city treasurer. The city or county treasurer shall  
14 transmit the monies received to the state treasurer.

15 7. Shall pay an additional assessment of one thousand dollars to be  
16 deposited by the state treasurer in the state general fund. This assessment  
17 is not subject to any surcharge. If the conviction occurred in the superior  
18 court or a justice court, the court shall transmit the assessed monies to the  
19 county treasurer. If the conviction occurred in a municipal court, the court  
20 shall transmit the assessed monies to the city treasurer. The city or county  
21 treasurer shall transmit the monies received to the state treasurer.

22 E. **Notwithstanding FOR A CONVICTION PURSUANT TO subsection D,**  
23 **paragraph 1** of this section, at the time of sentencing **if the person has an**  
24 **alcohol concentration of less than 0.20**, the judge may **suspend all but ten**  
25 **days of the sentence if the person completes a court ordered alcohol or other**  
26 **drug screening, education or treatment program.** If the person fails to  
27 **complete the court ordered alcohol or other drug screening, education or**  
28 **treatment program and has not been placed on probation, the court shall issue**  
29 **an order to show cause to the defendant as to why the remaining jail sentence**  
30 **should not be served** ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF  
31 THIRTY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR  
32 TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS  
33 ALCOHOL MONITORING.

34 F. If within a period of eighty-four months a person is convicted of a  
35 second violation of this section or is convicted of a violation of this  
36 section and has previously been convicted of a violation of section 28-1381  
37 or 28-1383 or an act in another jurisdiction that if committed in this state  
38 would be a violation of this section or section 28-1381 or 28-1383, the  
39 person:

40 1. Except as otherwise provided in this paragraph, shall be sentenced  
41 to serve not less than one hundred twenty days in jail, sixty days of which  
42 shall be served consecutively, and is not eligible for probation or  
43 suspension of execution of sentence unless the entire sentence has been  
44 served. A person who has an alcohol concentration of 0.20 or more shall be  
45 sentenced to serve not less than one hundred eighty days in jail, ninety of

1 which shall be served consecutively, and is not eligible for probation or  
2 suspension of execution of sentence unless the entire sentence has been  
3 served.

4       2. Shall pay a fine of not less than five hundred dollars, except that  
5 a person who has an alcohol concentration of 0.20 or more shall pay a fine of  
6 not less than one thousand dollars. The fine prescribed in this paragraph  
7 and any assessments, restitution and incarceration costs shall be paid before  
8 the assessment prescribed in paragraph 3 of this subsection.

9       3. Shall pay an additional assessment of two hundred fifty dollars.  
10 If the conviction occurred in the superior court or a justice court, the  
11 court shall transmit the monies received pursuant to this paragraph to the  
12 county treasurer. If the conviction occurred in a municipal court, the court  
13 shall transmit the monies received pursuant to this paragraph to the city  
14 treasurer. The city or county treasurer shall transmit the monies received  
15 to the state treasurer. The state treasurer shall deposit the monies  
16 received in the driving under the influence abatement fund established by  
17 section 28-1304.

18       4. Shall be ordered by a court to perform at least thirty hours of  
19 community restitution.

20       5. Shall have the person's driving privilege revoked for at least one  
21 year. The court shall report the conviction to the department. On receipt  
22 of the report, the department shall revoke the person's driving privilege and  
23 shall require the person to equip any motor vehicle the person operates with  
24 a certified ignition interlock device pursuant to section 28-3319. In  
25 addition, the court may order the person to equip any motor vehicle the  
26 person operates with a certified ignition interlock device for more than  
27 twelve months beginning on the date of reinstatement of the person's driving  
28 privilege following a suspension or revocation or on the date of the  
29 department's receipt of the report of conviction, whichever is later. The  
30 person who operates a motor vehicle with a certified ignition interlock  
31 device under this paragraph shall comply with article 5 of this chapter.

32       6. Shall pay an additional assessment of one thousand two hundred  
33 fifty dollars to be deposited by the state treasurer in the prison  
34 construction and operations fund established by section 41-1651. This  
35 assessment is not subject to any surcharge. If the conviction occurred in  
36 the superior court or a justice court, the court shall transmit the assessed  
37 monies to the county treasurer. If the conviction occurred in a municipal  
38 court, the court shall transmit the assessed monies to the city treasurer.  
39 The city or county treasurer shall transmit the monies received to the state  
40 treasurer.

41       7. Shall pay an additional assessment of one thousand two hundred  
42 fifty dollars to be deposited by the state treasurer in the state general  
43 fund. This assessment is not subject to any surcharge. If the conviction  
44 occurred in the superior court or a justice court, the court shall transmit  
45 the assessed monies to the county treasurer. If the conviction occurred in a

1 municipal court, the court shall transmit the assessed monies to the city  
2 treasurer. The city or county treasurer shall transmit the monies received  
3 to the state treasurer.

4 ~~G. Notwithstanding subsection F, paragraph 1 of this section, at the time of sentencing, if the person has an alcohol concentration of less than 0.20, the judge may suspend all but sixty days of the sentence if the person completes a court ordered alcohol or other drug screening, education or treatment program. If the person fails to complete the court ordered alcohol or other drug screening, education or treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.~~

12 G. FOR A CONVICTION PURSUANT TO SUBSECTION F OF THIS SECTION, AT THE TIME OF SENTENCING, THE JUDGE MAY ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF NINETY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR A MINIMUM OF TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS ALCOHOL MONITORING.

17 H. In applying the eighty-four month provision of subsection F of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

20 I. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

23 J. A person who is convicted of a violation of this section is guilty of a class 1 misdemeanor.

25 Sec. 2. Repeal

26 Section 28-1382, Arizona Revised Statutes, as amended by Laws 2007, chapter 195, section 3, is repealed.